

EXHIBIT 4

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 - - -

5
6 IN RE: NATIONAL : HON. DAN A.
7 PRESCRIPTION OPIATE : POLSTER
8 LITIGATION : :
9 : :
10 APPLIES TO ALL CASES : NO.
11 : 1:17-MD-2804
12 : :
13

14 - HIGHLY CONFIDENTIAL -

15 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

16 VOLUME I

17 - - -

18 April 17, 2019

19 - - -

20 Videotaped deposition of
21 THOMAS PREVOZNIK, taken pursuant to
22 notice, was held at the law offices of
23 Williams & Connolly, 725 12th Street,
24 Washington, D.C., beginning at 9:11 a.m.,
on the above date, before Michelle L.
Gray, a Registered Professional Reporter,
Certified Shorthand Reporter, Certified
Realtime Reporter, and Notary Public.

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1 need to follow up on.

2 Q. Okay. And how can you tell
3 if an order is a typical order versus one
4 that deviates substantially from a normal
5 pattern?

6 A. Well, I apologize. It's --
7 I don't know if you can say what the
8 difference is a typical order and that.
9 What you have is you have a history of
10 what are -- what are the sales to that
11 distributor. So you would start with
12 that. But as you -- as you -- as the
13 customers -- you know, what questions are
14 you asking the distributors? Are you
15 asking them for their customers? And,
16 you know, who are they selling to?

17 And then you can look at
18 newspaper articles and see the overdose
19 deaths. You can see this is affecting
20 these communities that these product,
21 your products, are going into, because
22 that distributor is putting them in
23 there. So you would have to start asking
24 those questions.

1 Q. But when a manufacturer
2 receives an order from a distributor, how
3 do you tell whether that particular order
4 deviates from a normal pattern, even
5 looking at the sales history to that
6 distributor?

7 A. I'm not sure I'm following.

8 Q. Well, I'm just asking you,
9 DEA has imposed this obligation on
10 manufacturers. And I'm wondering whether
11 DEA has a position on how a manufacturer
12 should determine whether a particular
13 order that comes into it from a
14 distributor, deviates from a normal
15 pattern?

16 A. Well, I mean, you can go
17 back to the internet days when it was --
18 the pattern was all of the sudden
19 products that were skyrocketing to the
20 millions and hundreds of thousands that
21 were never there.

22 Q. So you're saying if a
23 product was not being purchased at all
24 previously and then skyrocketed --

1 A. I'm not saying not at all.
2 But if it's -- if it's not been used
3 much, and then all of the sudden it takes
4 off.

5 Q. Okay. And if it does take
6 off, is that enough to conclude that the
7 product is being diverted?

8 A. I don't think it's enough to
9 conclude that it's diverted, just based
10 on that. But it should be enough to make
11 it a suspicious order, to at least report
12 it.

13 Q. Okay. And how big an
14 increase do you have in mind when you say
15 skyrocket?

16 A. I don't have a number in
17 mind.

18 Q. It sort of depends on the
19 situation?

20 A. It depends on the situation,
21 yeah.

22 Q. All right. How about with
23 respect to unusual frequency? When a
24 manufacturer receives an order from a

1 distributor, how does it determine
2 whether the order is one of unusual
3 frequency?

4 A. Well, again, are they
5 ordering more and more? I mean, again,
6 it depends on the situation. Again,
7 these are not -- not one particular
8 thing. It could be two of them, it could
9 be three of them. It could be any
10 information that you have obtained that
11 has and shows or that indicates that your
12 product may be being diverted, then you
13 have the responsibility to guard that
14 from doing that. So that would trigger a
15 suspicious order.

16 Q. So fair to say whether an
17 order is of an unusual frequency requires
18 some -- some judgment?

19 A. Yes.

20 Q. It's fair to say that it's
21 in the eye of the beholder?

22 A. I don't think it's in the
23 eye of the beholder because it's -- the
24 data is going to show you what is going

1 Does every order that's
2 unusually large necessarily lead to
3 diversion?

4 A. I have no idea.

5 MS. SINGER: Objection.
6 Scope.

7 THE WITNESS: I have no idea
8 what you mean by unusually large.

9 BY MR. O'CONNOR:

10 Q. Okay. As the term
11 "unusually large" is used in the
12 suspicious order monitoring regulation,
13 are orders that are unusually large
14 necessarily diverted?

15 A. Well, for example, a bottle
16 of 100 Vicodin from a manufacturer to a
17 vet, is that unusually large?

18 Q. Is it?

19 A. I don't think it's unusually
20 large, but it would raise my eyebrows of
21 why would -- why would a vet be ordering
22 that bottle when they know that the
23 toxicity to cats and dogs would kill
24 them. So I don't think you can just look

1 at a number and say that's too big.

2 MR. O'CONNOR: Whoever is on
3 the phone needs to go on mute.

4 MR. FINKELSTEIN: Whoever is
5 on the phone please mute your
6 phone.

7 BY MR. O'CONNOR:

8 Q. Before we get back to my
9 question, I just want to be clear.
10 Are -- are vets required to obtain a DEA
11 registration before they order controlled
12 substances?

13 A. Yes.

14 Q. And the DEA issues some
15 veterinarians registrations to allow them
16 to purchase controlled substances?

17 A. Correct.

18 Q. Okay. I do -- I do want to
19 get back to my original question though,
20 which was, is an order that is unusually
21 large, does that order necessarily lead
22 to diversion?

23 MR. FINKELSTEIN: Objection.

24 Vague.

1 THE WITNESS: It may or
2 may -- it may or may not.

3 BY MR. O'CONNOR:

4 Q. Would the same be true of an
5 unusually frequent order?

6 MR. FINKELSTEIN: Same
7 objection. You can answer.

8 THE WITNESS: Correct. It
9 may or may not.

10 BY MR. O'CONNOR:

11 Q. And the same would be true
12 of an order that deviates substantially
13 from the normal pattern?

14 MR. FINKELSTEIN: Same
15 objection. You can answer.

16 THE WITNESS: Correct. It
17 may or may not.

18 BY MR. O'CONNOR:

19 Q. Okay. And putting that
20 together, that means that not every
21 suspicious order leads to diversion,
22 correct?

23 MR. FINKELSTEIN: Objection.
24 Scope. You can answer.

1 THE WITNESS: Could you
2 please repeat that?

3 BY MR. O'CONNOR:

4 Q. Not every suspicious order
5 leads to diversion, correct?

6 A. Correct.

7 Q. I want to talk a little bit
8 about how suspicious order reports are --
9 are used within DEA.

10 Is it fair to say that most
11 suspicious order reports are submitted to
12 field offices?

13 A. I would say based on the
14 fact that the big three are filing
15 electronically, I would say the majority
16 electronically.

17 Q. When an order or when
18 suspicious order reports are filed
19 electronically, does that mean they are
20 filed with headquarters?

21 A. Yes. On the Legacy and the
22 vetted system.

23 Q. Okay. And do registrants
24 that are not reporting electronically to

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3 EASTERN DIVISION

4 IN RE: NATIONAL)
5 PRESCRIPTION) MDL No. 2804
6 OPIATE LITIGATION)
7 _____) Case No.
8) 1:17-MD-2804
9)
10 THIS DOCUMENT RELATES) Hon. Dan A.
11 TO ALL CASES) Polster
12)

13 FRIDAY, MAY 17, 2019

14 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
15 CONFIDENTIALITY REVIEW

16 - - -

17 Videotaped deposition of Thomas
18 Prevoznik, Volume III, held at the offices of
19 WILLIAMS & CONNOLLY LLP, 725 Twelfth Street,
20 NW, Washington, DC, commencing at 8:10 a.m.,
21 on the above date, before Carrie A. Campbell,
22 Registered Diplomate Reporter and Certified
23 Realtime Reporter.

24 - - -

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1 a combination.

2 And so in the example I
3 would -- I would say is -- I think I've used
4 it before was the veterinarian that is
5 ordering Vicodin with the acetaminophen that
6 is toxic to cats and dogs. So that in
7 itself, an order of that, would be why are
8 they doing that.

9 Q. But standing alone, without
10 follow-up due diligence, it is not
11 necessarily always possible to determine
12 whether an order that is an unusual size,
13 unusual pattern or frequency is, by itself,
14 for that reason, indicative of diversion,
15 correct?

16 MR. FINKELSTEIN: Asked and
17 answered. Incomplete hypothetical.

18 THE WITNESS: Correct.

19 QUESTIONS BY MS. MAINIGI:

20 Q. And so some sort of follow-up
21 due diligence needs to be done by the
22 distributor or registrant, correct?

23 MR. FINKELSTEIN: Incomplete
24 hypothetical. Asked and answered.

25 THE WITNESS: Right.

1 QUESTIONS BY MS. MAINIGI:

2 Q. And with respect to -- we've
3 talked a bit about due diligence in the last
4 couple of days of your deposition.

5 Do you recall that?

6 A. Yes.

7 Q. Okay. And with respect to --
8 you've been asked questions by both
9 Mr. Farrell and Ms. Singer about
10 documentation related to due diligence.

11 Do you recall that?

12 A. Yes.

13 Q. And I believe that you
14 indicated that there was not any sort of
15 requirement by the DEA of the maintenance of
16 due diligence files, correct?

17 MR. FINKELSTEIN:

18 Mischaracterizes prior testimony.

19 THE WITNESS: Yes.

20 QUESTIONS BY MS. MAINIGI:

21 Q. Now certainly the DEA's view
22 appears to be that due diligence is a good
23 practice or a best practice, fair?

24 MR. FINKELSTEIN: Foundation.

25 Mischaracterizes prior testimony.

1 THE WITNESS: Yes, it would be
2 good practice.

3 QUESTIONS BY MS. MAINIGI:

4 Q. And but the DEA has not issued
5 any sort of guidelines indicating how due
6 diligence should be conducted, true?

7 A. I mean, I would say that the
8 letters in 2006 and 2007 have certain
9 questions to be asked, so that's a guide of
10 what should be asked or what should be looked
11 for.

12 Q. Those are Mr. Rannazzisi's
13 letters?

14 A. Yes.

15 Q. And Mr. Rannazzisi's letters
16 touched on a few different areas, correct?

17 A. Correct.

18 Q. Let me try to focus on
19 guidelines that might be specific to the idea
20 of due diligence.

21 Are there -- are you aware of
22 DEA ever issuing any guidelines specific to
23 due diligence that describe how due diligence
24 should be conducted?

25 MR. FINKELSTEIN: Asked and

1 Q. But there's no requirement that
2 a due diligence file even be maintained,
3 correct?

4 A. Correct.

5 Q. So the two-year rule does not
6 apply to any due diligence files, per se,
7 correct?

8 A. Correct. I was just pointing
9 out that within the regs, there is records
10 for a two-year period.

11 Q. Due diligence is certainly an
12 important part of this process, right?

13 MR. FINKELSTEIN: Vague.

14 THE WITNESS: Yes.

15 QUESTIONS BY MS. MAINIGI:

16 Q. Why do you think the DEA has
17 never issued any specific guidance on due
18 diligence?

19 MR. FINKELSTEIN: Vague.

20 Instruct you not to answer to
21 the extent that the answer calls for
22 predecisional deliberative
23 communications within the Department
24 of Justice.

25 THE WITNESS: I don't know.

1 QUESTIONS BY MS. MAINIGI:

2 Q. Now, is there any sort of
3 requirement -- I'm going to come back to
4 suspicious orders.

5 Is there any kind of
6 requirement to hold on to suspicious orders
7 themselves that are reported?

8 MR. FINKELSTEIN: Vague.

9 THE WITNESS: I'm not sure I'm
10 following on that.

11 QUESTIONS BY MS. MAINIGI:

12 Q. Well, so, for example, if -- I
13 think when you were talking to one of the
14 other questioners, there was some reference
15 to perhaps at some point in time suspicious
16 orders being faxed in to the DEA.

17 Do you remember that
18 discussion?

19 A. Yes.

20 Q. Is there any sort of
21 requirement, either by the DEA or by the
22 registrant, to hold on to an actual
23 suspicious order being reported to the DEA?

24 MR. FINKELSTEIN: Scope.

25 Vague. Calls for speculation.

1 THE WITNESS: No.

2 QUESTIONS BY MS. MAINIGI:

3 Q. Has the DEA issued any sort of
4 guidance indicating how long a suspicious
5 order that's been reported must be
6 maintained?

7 A. No.

8 Q. Now, I think with one of the
9 prior questioners there was reference to --
10 well, let me back up.

11 You prepared back to 1996 for
12 this deposition, approximately, correct?

13 A. Well, I mean, I had -- I --
14 from the letters that you saw, I had some
15 letters from 1980s that I saw.

16 Q. So you prepared for various
17 earlier periods of time?

18 A. I looked for what I could find.

19 Q. Okay. And did you speak to any
20 folks in the field offices to help yourself
21 prepare for this deposition?

22 MR. FINKELSTEIN: Asked and
23 answered.

24 THE WITNESS: Yes.

25

1 QUESTIONS BY MS. MAINIGI:

2 Q. And who were the folks you
3 spoke to from the field office?

4 MR. FINKELSTEIN: Asked and
5 answered.

6 THE WITNESS: Scott Collier,
7 Ruth Carter, Susan Langston, Lisa
8 Sullivan, David White, Scott Garriott.
9 I'm trying to think.

10 QUESTIONS BY MS. MAINIGI:

11 Q. And those were all folks that
12 were in the field offices in years prior?

13 A. Yeah, they were in the field.
14 They've been -- they're in the field now.

15 Q. Okay. So you're aware through
16 your own experience in the field as well as
17 the conversations you had that the
18 requirement of the regulation and the statute
19 is that suspicious orders generally are
20 reported to the local or regional DEA
21 offices, correct?

22 A. Correct.

23 Q. And then it's up to the local
24 or regional DEA offices to ultimately make a
25 decision about whether to investigate a